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No. ...-...

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1984

CHURCH OF SCIENTOLOGY OF CALIFORNIA
and MARY SUE HUBBARD,

Petitioners,

vs.

SUPERIOR COURT OF THE STATE OF
CALIFORNIA, COUNTY OF LOS ANGELES,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTIONS PRESENTED

1. Where the central issue in a lawsuit is the maintenance of the privacy of personal, religious and associational materials, and where a state trial court has released such materials to the public pursuant to defenses that are claimed to be unrecognized and impermissible as a matter of law, does due trocess of law require that the materials be sealed pending the resolution of appeal because otherwise the harm asserted will be irreparable and appellants will be deprived of any meaningful access to appellate review?

2. Where the central issue in a lawsuit is the maintenance of the privacy of personal, religious and

associational materials hitherto unreleased to the public, does the constitutional right of privacy require that the privacy of the materials be maintained during the course of an appeal which asserts that the trial court erred in ordering the public release of the hitherto private materials?

3. Does due process of law permit a party to be deprived of judicial relief based upon generalized, unrelated claims of bad conduct, particularly when the party is deprived of interim relief to maintain the status quo ante in order to seek appellate review of the denial of judicial relief?

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Respondent.

**PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Petitioners Church of Scientology of California and Mary Sue Hubbard respectfully pray that a writ of certiorari

issue to review the denial by the United States District Court of petitioners' application for a preliminary injunction. Petitioners' emergency application for an injunction pending appeal has been denied by the United States Court of Appeals for the Ninth Circuit.

OPINION BELOW.

No written opinion has been issued by the district court or the court of appeals. The order of the District Court for the Central District of California, entered on November 19, 1984, appears in the appendix. The orders of the United States Court of Appeals for the Ninth Circuit, filed November 21, 1984, and November 27, 1984, also appear in the appendix.

JURISDICTION.

The order of the District Court for the Central District of California was entered on November 19, 1984. The final order of the United States Court of Appeals for the Ninth Circuit was entered on November 27, 1984. This petition for certiorari has been filed within 90 days of that date. This court's jurisdiction is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

United States Constitution:

Amendment 1.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people

peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment 14.

Section 1 . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

United States Code, Title 42:

§1983. Civil action for deprivation of rights.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or

the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

A. Preliminary Statement

This petition for writ of certiorari is sought before final judgment by the United States Court of Appeals for the

Ninth Circuit at the suggestion of that court. The reason for seeking certiorari at this time is unique to the circumstances of this case, as recognized by the court of appeals. As more fully set forth herein (infra), petitioners sought a preliminary injunction from the United States District Court for the Central District of California to prohibit respondent from releasing numerous documents on the grounds that such release would violate petitioners' right to personal and religious privacy, access to the courts, and due process of law. The district court denied the preliminary injunction, and appeal was immediately taken to the Ninth Circuit. A single judge of that court stayed release of the documents for several days, but on

November 27, 1984, the court of appeals denied petitioners' application for an injunction pending appeal of the district court's denial of petitoners' motion for preliminary injunction. Since the court of appeals' denial of the application for injunction pending appeal was pursuant to the identical legal standard as that applicable to the district court's consideration of the motion for preliminary injunction, see Lopez v. Heckler, 713 F.2d 1432, 1435 (9th Cir. 1983), its action in effect disposed of the appeal on the merits as well. It is for that reason, apparently, that the court of appeals extended the order staying release of the documents until petitioner filed a petition for writ of certiorari with this court. Presumably,

upon filing of this petition, the stay will continue in effect until the petition is acted upon.

B. The Parties

The Church of Scientology of California, Inc., is part of the organized hierarchical Church within the religious movement of Scientology (hereafter "Church"). The Church is a religious organization entitled to invoke the protection of the Free Exercise Clause of the First Amendment of the United States Constitution.

Mary Sue Hubbard is the wife of the Founder of the religion of Scientology, L. Ron Hubbard. She and Mr. Hubbard were married in the early 1950's, at the time the Scientology religion was beginning.

She held various posts within the religious structure of Scientology until May, 1981.

The Superior Court of the State of California, County of Los Angeles, is the court of general trial jurisdiction in California which heard the case of Church of Scientology of California, Plaintiff, and Mary Sue Hubbard, Intervenor v. Gerald Armstrong, No. C 420153 (hereafter "superior court"). That court made available for public inspection and copying thousands of pages of personal, private and religious papers, the maintenance of whose privacy were the heart of the action, and refused to maintain them under seal pending state appellate review of the propriety of its rulings.

Gerald Armstrong is the defendant in the state case and the cross-complainant in a separate cross complaint brought against the Church of Scientology of California, which is still pending (hereafter "state defendant"). Mr. Armstrong is a former member of the Church of Scientology. He left his Church staff position and severed all ties with the Church in December, 1981.

C. The Documents

The private and religious documents at issue were, according to the decision of the state trial court, converted by Gerald Armstrong from the Church of Scientology of California, which held the

documents as bailee for L. Ron Hubbard.[1/] Mr. Armstrong had gathered the documents while he was serving in his official capacity as a staff member of the Church employed to establish and maintain an archive of materials gathered about the life of the Founder, L. Ron Hubbard, and the history of Scientology.

The thousands of pages of documents, which will be released to the public unless this court grants certiorari and

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1/ L. Ron Hubbard is the Founder of the religion of Scientology. The written and spoken word of L. Ron Hubbard constitute the doctrine of the religion of Scientology. For the last several years, as he has occasionally done throughout his life, and as many others have done for similar reasons, Mr. Hubbard has chosen to remain in seclusion in order to further his religious writings and research without interruption. He was not a party to either the state case or the district court action.

ultimately requires that they be maintained under seal pending final appellate resolution of the state case, are private materials which are the property of L. Ron Hubbard, of his family, including his wife, Mary Sue Hubbard, and of the Church. They include the most private of matters -- letters between Mr. Hubbard and his present and former wives; other personal letters; private notes and diaries; handwritten research notes of L. Ron Hubbard; Mr. Hubbard's personal Naval and Veterans Administration records, including medical records; early private religious writings by L. Ron Hubbard, encompassing incomplete research notes and ideas and theories, including notes of the ideas of others which have been compiled by L. Ron

Hubbard; Scientology financial and organizational memoranda including information pertaining to members of the Church; unpublished personal poetry; and other documents written by Mr. Hubbard, as the Founder of the religion of Scientology, over the course of fifty years.

D. The Superior Court Proceedings

Petitioner Church's state court complaint, alleging torts of conversion, breach of fiduciary duty, and seeking injunctive relief, was filed in the Los Angeles Superior Court on August 2, 1982. A Complaint in Intervention was filed on November 28, 1982, by petitioner Mary Sue Hubbard.

On August 24, 1982, the Church's application for a temporary restraining

order was granted by the Honorable John L. Cole. Judge Cole's order restrained Mr. Armstrong and his agents from duplicating, disclosing and disseminating the documents in question. Judge Cole also ordered that the documents were to be surrendered to the possession of the clerk of the superior court under seal, only to be viewed by the attorneys of record for use in the state case. The documents remained under seal pursuant to a preliminary injunction issued on October 4, 1982, which was later clarified in an Order filed December 23, 1982.

Trial commenced on May 3, 1984. On May 9, following the completion of petitioners' case in chief, the superior court ruled that they had established, by

a preponderance of the evidence, an invasion of privacy, breach of fiduciary duty and conversion by Mr. Armstrong with respect to the documents.

For his defense, Mr. Armstrong relied on the novel theories, permitted only on the eve of trial, that (a) he was justified in taking the documents based upon his belief that these private and confidential papers showed alleged frauds and misrepresentations, and (b) the documents were taken because they were necessary for preparation of a hypothetical lawsuit that he believed would be brought against him by the Church, and that he conveyed these materials to his attorneys to hold the documents as evidence in such an anticipated lawsuit. He also was

permitted to assert the defense of unclean hands, even though this defense had been stricken on four separate occasions in the case until the superior court allowed it for the first time at trial. Petitioners contended that these defenses were impermissible as a matter of law and under the circumstances of the case.

Only because Mr. Armstrong was permitted to raise the defenses of "justification" and "unclean hands" were the subject documents admitted into evidence. The defendant proceeded with his case, during which the sealed documents were marked as exhibits. During the trial, the superior court maintained the documents under seal. However, on June 6 and 7, 1984, after all

parties had rested, the superior court, over petitioners' strenuous objections, received into evidence a large number of documents, removing them from the sealing order. The seal was also removed on many documents marked as exhibits but not admitted into evidence. As of this date, no documents have yet been made publicly available, but they will imminently be so available absent the grant of certiorari by this Court.

E. The Superior Court's Decision

On June 20, 1984, the superior court issued a Memorandum of Intended Decision which was subsequently converted into a Statement of Decision. That decision ruled in Mr. Armstrong's favor on both the equitable and damage claims.

The superior court found that, while petitioners had established a prima facie case, defendant Armstrong prevailed on the previously described "justification" and "unclean hands" defenses. With respect to both the justification and unclean hands defenses, the court relied upon generalized conclusions that the Church and Mr. Hubbard had engaged in past practices -- not against Mr. Armstrong -- some of which predated the incidents in question by twenty to thirty years. The court characterized the Church in gratuitously hostile terms, as it did the religion's Founder. Regarding Mrs. Hubbard, who had left any position with the Church prior to any of the events at issue, the superior court did not even indicate that it based its

decision to deny her equitable relief or damages as a result of anything she had purportedly done or known about regarding Mr. Armstrong, but simply painted her with a generalized pejorative brush and denied her claims for relief.

The Memorandum of Intended Decision reaffirmed the superior court's earlier decision to remove the seal from the documents at issue in the case and made clear that it was intended to modify the preliminary injunction for the purpose of making the documents, and the previously sealed inventory lists thereof, available for public inspection and copying. The superior court refused to stay its order pending resolution of the state court appeal.

F. State Appellate Efforts

Notice of Appeal from the superior court's order dissolving, in part, the preliminary injunction, was filed June 21, 1984. Final judgment was entered on August 10, 1984, when the superior court adopted the Memorandum of Intended Decision as his final order. Notice of Appeal from this judgment was filed August 23, 1984. Both the California Court of Appeal and California Supreme Court entered temporary stays, maintaining the seal on the documents. The last of those stays, entered by the California Supreme Court, expired on November 15, 1984.

G. Federal Court Efforts

Petitioners herein filed a verified complaint seeking injunctive relief

pursuant to 42 U.S.C. §1983 in the United States District Court on November 19, 1984. The complaint alleged that the failure to maintain the materials under seal during the state court appeal denied petitioners due process of law in that, without such a seal, their appellate remedy would be rendered effectively meaningless, thus depriving them of meaningful access to the courts. The complaint also alleged that the California Superior Court's refusal, acting under color of state law, to maintain a seal on the private materials pending resolution of the state court appeal, deprived petitioners of their rights under the First and Fourteenth Amendments to the Constitution in that the Constitutional rights to freedom of

religion, of association, and of privacy require that said documents remain sealed.

An application for a temporary restraining order was filed concurrently. In the application for the restraining order, petitioners requested that the district court order the Los Angeles Superior Court to refrain from unsealing the documents and releasing said documents to the public. District Judge Harry Hupp heard argument on the restraining order on November 19, 1984. When the district court indicated its intention to deny the restraining order, plaintiffs requested the court to deem the application for the restraining order a motion for preliminary injunction. The district court so deemed the application

and denied the injunction, finding "no violation or any substantial chance of establishing a violation of the federal constitution." (Appendix p. 2).

Notice of Appeal from the district court's denial of the preliminary injunction was filed November 20, 1984. On November 21, 1984, an emergency motion for injunction pending appeal was filed in the United States Court of Appeals for Ninth Circuit. By order dated November 21, 1984, the Honorable William A. Norris, Circuit Judge, temporarily granted the injunction, until November 27, 1984, in order to give the parties an opportunity to present papers to a regularly constituted motions panel. (Appendix, p. 4-5). On November 27, 1984, the emergency motion for an injunction

pending appeal was denied by the court of appeals, but the seal was ordered to remain in effect until December 7, 1984, to permit the filing of a petition for writ of certiorari in Court. The order further stated that no petition for rehearing would be entertained. (Appendix, p. 6-7).

REASONS FOR GRANTING THE WRIT

This petition presents this Court with the opportunity to provide guidance to the lower courts on an issue which implicates significant constitutional rights of privacy, freedom of religion and due process, and presents a very real problem in the practical administration of justice. The fundamental constitutional claim which petitioners presented to the district court was that,

unless a seal is maintained on the documents pending final outcome of the state appellate process, plaintiffs will be denied due process of law. The superior court action was brought as the only means available to protect the privacy and confidentiality of the documents. At trial, the superior court allowed thousands of pages of these private documents to be identified and introduced, over petitioners' strenuous objections, in support of defendant's affirmative defenses of "justification" and "unclean hands." The central contention in the state appeal will be that these defenses were impermissible and that, accordingly, the superior court wrongfully allowed the documents to be introduced and identified. If

petitioners' contention is upheld, the superior court will have been in error in permitting the documents to be introduced and in removing the seal from them based on that introduction.

However, if a seal is not maintained on the documents pending resolution of the state court appeal, petitioners' ability to obtain any meaningful appellate review will be destroyed because the main issue on appeal is that the documents should not have been introduced and unsealed. Thus, if petitioners prevail on appeal, it will be too late to vindicate their rights. Accordingly, due process of law requires that the documents remain sealed pending resolution of the federal appeal.

Petitioners' constitutional claims are particularly important because the personal and religious documents which are threatened with public release are private documents protected by the privacy and religious clauses of the constitution, and because the very decision of the California Superior Court was based upon generalized claims of bad conduct by plaintiffs, unrelated to the issues raised by the pleadings, in violation of due process of law.

Despite these compelling constitutional claims, the district court refused to grant a preliminary injunction because it did not perceive any constitutional issues in the claims. Similarly, both the district court and the Ninth Circuit Court of Appeals

refused to grant an injunction pending appeal to the Ninth Circuit, thus effectively preventing petitioners from obtaining meaningful review of their consitutional claims before the Ninth Circuit. Accordingly, only the immediate grant of a writ of certiorai by this court can provide effective review of the grave constitutional questions at stake.

The state of the law in this area is not well defined and, thus, the lower courts must resolve problems of this type on a case by case basis without guidance from this Court. More particularly, the failure of the district court to recognize petitioners' claims as ones of constitutional dimension raises important questions of constitutional law, of the proper handling of relations between the

federal and state judiciary, and of the standards for insuring the protection of fundamental rights during state court appeals.

The record in this case presents a particularly favorable setting in which to resolve many of these issues. The rights of petitioners are of extraordinary importance; there is a significant possibility of reversal on appeal of the superior court judgment; and, if the documents are released, petitioners will suffer the irreparable harm of public disclosure which cannot be remedied even with a complete reversal on appeal. Thus, this case squarely frames these significant questions, questions which are usually not susceptible of resolution by this Court becuase the harm

has generally occurred before this court ever has the opportunity to address these issues.

1. THE DUE PROCESS RIGHT TO MEANINGFUL ACCESS TO THE GENERALLY AVAILABLE APPELLATE REMEDIES IS AN IMPORTANT QUESTION OF CONSTITUTIONAL LAW, WHOSE CLARIFICATION IS OF SIGNIFICANCE TO BOTH THE STATE AND FEDERAL COURTS' ADMINISTRATION OF JUSTICE.

This Court has made it clear that the right of access to the courts is fundamental and that its denial is a violation of the due process clause of the Fourteenth and the Fifth Amendments. As early as 1907, this Court underscored the fundamental nature of the right of access to the courts:

> "The right to sue and defend in the courts is the alternative of force. In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government."

Chambers v. Baltimore and Ohio Railroad Co., 207 U.S. 142, (1907); see also Barbier v. Connolly, 113 U.S. 27, (1885).

The federal courts have long recognized that access to the courts encompasses "all the means required for a litigant to get a fair hearing from the judiciary on the charges brought against him or grievances alleged by him." O'Conner v. Mowbray, 504 F. Supp. 139 (D. Nev. 1980) (enjoining Nevada Supreme Court from restricting public access to that Court's library on basis of due process right of access to the courts);

Gilmore v. Lynch, 319 F. Supp. 105 (N.D. Cal. 1970), aff'd 404 U.S. 15 (1970).

This Court, in cases raising fundamental interests similar to the rights of privacy and religious freedom asserted here, has recognized the constitutional requirement that parties must be given meaningful opportunity to be heard through the judicial process. See, e.g., Boddie v. Connecticut, 401 U.S. 371 (1971) (due process of law prohibits a state from denying, solely because of inability to pay court fees and costs, access to its courts to indigents who seek judicial dissolution of their marriages). Further this Court has repeatedly recognized that a mere formal right of access to the courts does not satisfy the constitutional

requirements. Rather, the access must be "adequate, effective, and meaningful." Bounds v. Smith, 430 U.S. 817, 822 (1977).

The requirement of meaningful access to appellate courts is demonstrated in a case closely paralleling the instant case, Henry v. First National Bank of Clarksdale, 424 F. Supp. 633 (N.D. Miss. 1976), aff'd 595 F.2d 291 (5th Cir. 1979) in which the United States District Court, in a §1983 action, enjoined the Mississippi state court from requiring the NAACP to post an appeal bond in a case raising First Amendment issues because the state rule deprived plaintiffs of due process of law. Ultimately this Court granted certiorari on the merits of the case and reversed

the Mississippi state court judgment on First Amendment grounds. See NAACP v. Claiborne Hardware, 458 U.S. 886 (1982). Of course, had the federal district court in Henry not enjoined the appeal bond, the NAACP may never have been able to pursue its appellate remedies and ultimately vindicate its rights before this Court.

Where a state provides a right to appeal, it must meet the requirments of due process and equal protection. See Douglas v. California, 372 U.S. 353 (1963); Griffin v. Illinois, 351 U.S. 12 (1956). However, despite this well known proposition, the due process standards for ensuring that a meaningful appeal is not effectively destroyed because the state court refuses to give relief

necessary to allow meaningful appellate review are not at all clear. This petition provides an opportunity to clarify and articulate those standards.

The instant documents were admittedly taken without authorization by Mr. Armstrong. In a classic "Catch 22," plaintiffs were required to seek court relief, and the court permitted the very intrusion and exposure whose prevention was at the heart of the lawsuit. The very documents petitioners sought to have returned, explicitly because of the private character of the materials, will now be placed on the public record, and all confidentiality inherent in the documents will be destroyed, before the trial court's rulings are ever reviewed by an appellate court. Thus, petitioners

will have been denied meaningful access to the courts because, if the documents are unsealed pending appeal, the injury which is at the heart of the lawsuit will have already occurred; it will be of no avail to prevail on appeal. The court, at that point, will not be able to "unring the bell" rung by the public release of the documents. See Maness v. Meyers, 419 U.S. 449, 592 (1975).

Petitioners have established that they will be effectively deprived of their constitutionally protected privacy rights and First Amendment rights without ever having had the opportunity for appellate review unless an injunction issues. If petitioners prevail on appeal, but the documents have been publicly disseminated, the appellate

victory will have been rendered meaningless. Courts throughout the country must decide what constitutional standards guide their conduct in such circumstances. A grant of certiorari by this court will permit the determination of the constitutional standards which they should apply.

2. UNDER WHAT CIRCUMSTANCES A PARTY'S PRIVACY INTERESTS REQUIRE THE MAINTENANCE OF A SEAL IN THE COURSE OF LITIGATION IS AN IMPORTANT UNRESOLVED CONSTITUTIONAL QUESTION WHICH MUST REGULARLY BE ADDRESSED BY TRIAL COURTS.

The instant petition presents a situation in which the private documents of L. Ron Hubbard, of his family, and of

the religion which he founded, were provided for an authorized biography subject to his final approval. They were taken by a disaffected former adherent. Their private nature will be totally destroyed unless relief is forthcoming from this Court.

The clearest exposition by this Court of the constitutionally based right to privacy is found in Whalen v. Roe, 429 U.S. 589, 599 (1973), where constitutional protection for, at least, "the individual interest in avoiding disclosure of personal matters" and "the individual interest in independence in making certain kinds of decisions" was identified. (Emphasis added.) This Court has long recognized that one's private papers are protected by such a

right of privacy. Boyd v. United States, 116 U.S. 616 (1886); see also Fisher v. United States, 425 U.S. 391 (1976), ("[p]ersonal letters constitute an integral aspect of a person's private enclave") (Brennan, J., concurring); Nixon v. Administrator of General Services, 433 U.S. 425, 465 (1976), (former President Richard Nixon's "private communications between him and, among others, his wife, his daughters, his physician, lawyer, clergyman, and his close friends, as well as personal diary dictabelts and his wife's personal files" were subject to "a legitimate expectation of privacy").

Ironically, a case dramatizing the grave privacy issues at stake here involved some of the same parties. In

United States v. Hubbard, 650 F.2d 293 (D.C. Cir. 1980), the court of appeals recognized that the Church of Scientology of California had property and privacy rights in its internal documents which it could assert, both on its own behalf and on behalf of its membership. The appellate court reversed an unsealing order of the district court that had granted public access to thousands of internal Church documents, which were part of the record at a Fed.R.Crim.P. 41(e) hearing to demonstrate that a government search was overbroad. The court of appeals determined that the district court's unsealing order was clearly erroneous and ordered an immediate resealing of the documents.

In reaching its decision, the Hubbard court relied principally upon a rationale equally applicable in this case. The court observed that one should not have to forfeit one's privacy rights in the course of attempting to uphold those very rights. Id. at 321. What this case presents is an issue which Hubbard did not address -- in determining the very issue of whether documents were wrongfully released to the public, does due process require that the documents be sealed until there is an appellate resolution of the propriety of the unsealing? In Hubbard, the court of appeals did not require that the documents be sealed pending appeal. Hence, the appellate vindication could be and was only partial at best. The

Hubbard case demonstrates the need for this Court to address the issue of whether private material under the control of a court may be publicly released when the very issue of whether they are private and should not be released has not yet been resolved through the court process.

Petitioners herein must not be deprived of their privacy rights in the documents at issue by virtue of the fact that they sought recourse from the courts in order to establish their claim that these documents were wrongfully taken by Mr. Armstrong, and should be returned as private, personal and confidential documents. Plaintiffs' constitutional privacy rights will be irreparably abridged unless the public dissemination

of the documents is enjoined pending an appellate review of the issues in the state case.[2/]

3. WHETHER A PARTY MAY BE DEPRIVED OF JUDICIAL RELIEF BASED UPON GENERALIZED CHARGES OF BAD CONDUCT IS AN IMPORTANT QUESTION OF DUE PROCESS OF LAW.

The superior court, in finding for Armstrong on his affirmative defenses of justification and unclean hands, relied on generalized conclusions that the

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2/ In this case, as in Hubbard, the public dissemination of private documents involves First Amendment as well as privacy issues. The Church and Mrs. Hubbard assert not only privacy interests, but also religious interests flowing from the religion clauses of the United States Constitution. When First Amendment interests are involved, intrusion is only permissible on a showing of a compelling state interest and by the least intrusive means possible. See, e.g., NLRB v. Catholic Bishop of Chicago, 440 U.S. 490 (1979).

Church and Mrs. Hubbard had engaged in past misconduct unrelated to the issues in the case. The court, in effect, found that petitioners were not entitled to court relief based upon these characterizations and ruled that the state court defendant, Gerald Armstrong, was justified in converting private documents, breaching his fiduciary duty and invading petitioner Mary Sue Hubbard's privacy.

The resulting constitutional injury caused by the superior court's ruling is analogous to that incurred in Schware v. Board of Examiners, 353 U.S. 232 (1957) and similar cases. In Schware, the petitioner's application to take a state Bar examination had been denied. The applicant had, years earlier, been a

member of the Communist Party, had been arrested on several occasions in the past, and had used aliases more than fifteen years prior to his Bar application. This Court concluded that the standards for qualification for admission to the Bar must be rationally connected with an applicant's fitness or capacity to practice law or run afoul of due process of law. See also, e.g., Healey v. James, 408 U.S. 169 (1972) (local, independent chapter of Students for a Democratic Society could not be denied recognition by a state school based upon violent campus activity of other chapters of the organization).

As has been noted above, the superior court's ruling in this case was based upon allegations of misconduct

which were unrelated to Mr. Armstrong and which occurred in a time frame far removed from that at issue in the case. Reliance on such evidence, in light of the attenuated relationship between the issues in the case and the alleged misconduct, violates due process. Essentially, the Church of Scientology was denied access to the courts because it <u>is</u> the Church of Scientology, not because of what it had done with regard to state defendant Armstrong.

The superior court in this case punished the Church and Mrs. Hubbard for their "association" with conduct allegedly committed by other Scientology affiliated groups, on other occasions, under decidedly different circumstances, and in times long past. The "evidence"

in support of such claims of misconduct was admitted only to show Mr. Armstrong's state of mind. Thus, the usual safeguards limiting the use of hearsay testimony were disregarded. Without regard to the reliability of the evidence presented and without the opportunity for meaningful cross-examination, Mr. Armstrong and the other defense witnesses were permitted to recount virtually every rumor, accusation and subjective reaction regarding the Church and Mr. Hubbard, over approximately a fifty year period. The superior court in turn then utilized this "evidence" to conclude that petitioners were to be treated differently from the citizenry at large and foreclosed them from the judicial relief to which they would otherwise be

entitled. Whether one may be so deprived of judicial relief, before the permissibility of such findings can be subjected to appellate review, is an important question of due process of law.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the order of the Central District of California denying a preliminary injunction and the order of the Ninth Circuit Court of Appeals denying an injunction pending appeal of the Central District's ruling.

Dated: December 6, 1984.

Respectfully submitted,

ERIC M. LIEBERMAN

BARRETT S. LITT

Counsel for Petitioners

APPENDIX

Findings of Fact by the Honorable Harry L. Hupp, United States District Judge (Reporter's Transcript of Proceedings, November 19, 1984, pp. 50-51):

THE COURT: I don't need to make written findings. I can make oral findings. So I am doing so right now.

First I will find I have jurisdiction in referring back to the Miofsky case of Judge Norris in 1983. So I do have jurisdiction.

So far as irreparable injury is concerned, if there is a Constitutional violation, there is irreparable injury to the plaintiffs. But the Court is satisfied that there is no violation of the plaintiffs' Constitutional rights here; that the question of whether exhibits should be sealed or not does not

rise to a federal Constitutional level, is subject only to the state law of California, and that the state courts are the final arbiter of whether the exhibits in their trials should be sealed and remain sealed; that that's true in this situation presented by the plaintiffs as well as in any other kind of litigation involving sensitive personal information with their implication on the rights of privacy; that so far as the state law appellate rights are concerned, that the plaintiff has pursued their rights and the state courts have determined not to keep in effect the preliminary injunction which sealed these documents; and that they pursued that question to the California Supreme Court which ruled against it.

I find no violation or any substantial chance of establishing a violation of the federal Constitution in

determining by the state courts this question of whether exhibits admitted into a state court trial should remain sealed pending appeal in the state court.

Those will be my oral findings. If counsel wish to order a copy of the transcript, they can see the Reporter on that.

And the minute order, of course, should read that the application for a temporary restraining order and preliminary injunction are denied pursuant to the oral findings stated by the Court on the record.

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CA#: 84-6510

CHURCH OF SCIENTOLOGY OF CALIFORNIA and MARY SUE HUBBARD,	ORDER
Plaintiffs-Appellants,	FILED November 21, 1984 Phillip B. Winberry Clerk, U.S. Court of Appeals
vs.	
SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF LOS ANGELES	
Defendant-Appellee.	

Before: NORRIS, Circuit Judge

It is hereby ordered that Defendant-Appellee Superior Court of the State of California, County of Los Angeles, is enjoined from removing the seal and making available for public inspection those exhibits received in evidence or marked for identification in Los Angeles Superior

Court Case No. C420153, entitled Church of Scientology, et al., v. Gerald Armstrong, and inventories, lists and descriptions of said exhibits received and marked for identification and documents currently under seal.

This injunction is effective until 10:00 a.m., Nov. 27, 1984 so as to give the parties the opportunity to present papers to a regularly constituted motions panel in San Francisco.

The parties shall file their papers in San Francisco no later than close of business on Nov. 23, 1984. Parties shall also serve opposing counsel with the papers no later than 5:00 p.m., Nov. 21, 1984.

William A. Norris,
Circuit Judge

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

	CA#: 84-6510
CHURCH OF SCIENTOLOGY OF CALIFORNIA and MARY SUE HUBBARD, Plaintiffs-Appellants, vs. SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF LOS ANGELES Defendant-Appellee.	DC# CV-84 8837 HLH Central California ORDER FILED Nov. 27, 1984 Phillip B.Winberry Clerk, U.S. Court of Appeals

Before: POOLE and BEEZER, Circuit Judges

Appellants' emergency motion for an injunction pending appeal is denied. The documents currently under seal in California Superior Court case #C420153, Church of Scientology v. Armstrong, shall remain sealed until 5:00 p.m., pacific standard time, December 7, 1984, to permit appellants to file for certiorari in the

U.S. Supreme Court. No petition for rehearing will be entertained.

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